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BEFORE THE  
PUBLIC SERVICE COMMISSION OF WISCONSIN

Annual Reports for the Year Ended December 31, 2001, Filed by Alternative Telecommunications Utility-Telecommunications Resellers on a Confidential Basis

RE: PSC Control Nos. 19964, 19965, 19971, 19972, 20003, 20005, 20006, 20007, 20136, 23769, 23770, 23785, and 23786

Annual Reports for the Year Ended December 31, 2001, Filed by Interexchange Carriers and Other Selected Entities on a Confidential Basis

RE: PSC Control Nos. 19977, 19978, 20137, 23771, 23772, and 23783

Alternative Telecommunications Utility-Other Telecommunications Provider Annual Reports for the Year Ended December 31, 2001, Filed by Competitive Local Exchange Carriers and Video Distance Learning Providers on a Confidential Basis

RE: PSC Control Nos. 19022, 19961, 19962, 19963, 19975, 19979, 20455, 20456, 20533, 20534, 23026, 23042, 23043, 23044, 23063, 23064, 23065, 23682, 23683, 23754, 23773, 23774, 23779, 23780, 23781, and 23782

Annual Reports for the Year Ended December 31, 2001, Filed by Commercial Mobile Radio Service Providers on a Confidential Basis

RE: PSC Control Nos. 17916, 19204, 19205, 19206, 23598, and 23599

**CONFIDENTIALITY DETERMINATION**

On October 1, 2002, the Commission issued a Confidentiality Determination denying the written applications of AT&T Wireless Services of Minnesota, Inc. (AT&T Wireless), SprintCom, Inc., and Sprint Spectrum L.P. seeking confidential treatment of certain information in their 2001 Commercial Mobile Radio Service Provider (CMR) annual reports.

On October 21, 2002, the Commission issued a Confidentiality Determination denying the written applications of TTI National, Inc., Telecom USA, and ACC National Long Distance

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Corporation seeking confidential treatment of certain information in their 2001 Alternative Telecommunications Utility-Telecommunications Reseller (RES) annual reports.

On October 21, 2002, the Commission issued a Confidentiality Determination denying the written applications of AT&T Communications of Wisconsin I, LP and MCI WorldCom Network Services, Inc. seeking confidential treatment of certain information in their 2001 Interexchange Carriers and Other Selected Alternative Telecommunications Utility-Other Telecommunications Provider Entities (ARW) annual reports.

On October 25, 2002, the Commission issued a Confidentiality Determination denying the written applications of MCImetro Access Transmission Services, LLC, IP Communications Corporation, Intermedia Communications, Inc., McLeodUSA Telecommunications Services, Inc., Minnesota Power Telecom, Inc., MCI WorldCom Communications, Inc., Navigator Telecommunications, LLC, TCG Milwaukee, Inc., TDS Metrocom, Inc., Time Warner Telecom of Wisconsin, L.P. (Time Warner Telecom),<sup>1</sup> and Globalcom, Inc. seeking confidential treatment of certain information in their 2001 Alternative Telecommunications Utility-Other Telecommunications Provider (OTH) annual reports.

On November 26, 2002, the Commission issued a Stay Concerning Confidential Determinations staying the confidentiality determinations discussed above<sup>2</sup> pending the outcome of any related Commission action and then-pending court cases.

In 2002, nine court cases were filed. The nine cases were subsequently consolidated into two cases. Both cases were decided in 2003. One court case resulted in a decision favorable to

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<sup>1</sup> A supplemental affidavit pertaining to Time Warner Telecom's 2001 OTH annual report was also filed on October 17, 2003.

<sup>2</sup> The October 1, 2002, CMR annual report confidentiality determination was actually stayed via a Stipulation and Order signed by SprintCom, Inc., and Sprint Spectrum L.P., and the Commission agreeing to stay the directive to file publicly, pending judicial review.

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the Commission's determinations; the other court case resulted in an adverse decision. Although the Commission prevailed in part, it voluntarily accepted a remand to re-determine the challenged determinations. The determinations made in the present decision are consistent with the circuit court's construction of the confidentiality rule.

This confidentiality determination is made pursuant to the Commission's jurisdiction under Wis. Stat. §§ 196.02(1), 196.14, and other provisions of Wis. Stat. ch. 196 and Wis. Stat. §§ 19.32-.39, as may be pertinent hereto, the Commission's November 21, 2000, order delegating confidential handling determinations, and Wis. Admin. Code § PSC 2.12.

### **FINDINGS OF FACT**

1. All of the above-referenced companies are required to file an annual report with the Commission. The statutory filing date for the annual report covering 2001 calendar year operations was April 1, 2002.
2. The above requests<sup>3</sup> for confidential handling concern portions of 2001 annual reports which individually became Commission records, within the meaning of Wis. Stat. § 19.32(2).
3. Each requester filed affidavits in support of the requests claiming that the records, if released, would aid a competitor of a public utility in competition with the public utility, as provided under Wis. Stat. § 196.14, and, in many cases, constitute trade secrets, as defined in Wis. Stat. § 19.32(2).

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<sup>3</sup> This determination is also intended to cover other 2001 CMR, RES, ARW, or OTH annual report filings, if any, concerning confidential treatment which are not itemized above.

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4. Pursuant to Wis. Admin. Code § PSC 2.12(6), the Commission has confidentially handled the records pending this determination and will continue to confidentially handle the records after the date of this determination.

5. The records contain information which derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use.

6. The records contain information that would aid a competitor of the respective entities in competition with the requesters.

### **CONCLUSIONS OF LAW**

1. There is a reasonable basis to conclude that the records contain information which would aid a competitor of a public utility in competition with the public utility, within the meaning of Wis. Stat. § 196.14.

2. There is a reasonable basis to conclude that in situations where a request for trade secret status was made, the records contain trade secrets within the meaning of Wis. Stat. § 134.90(1)(c).

### **ORDER**

WHEREFORE, confidential treatment of information requested by the above-referenced companies in their 2001 annual reports is **granted**. Trade secret status for such information under Wis. Stat. §§ 19.36(5) and 134.90(1)(c), as claimed by many of the companies, is likewise **granted**.

This confidentiality determination is not a final determination under the Public Records law; it is the Commission's decision for purposes of managing its files. This confidentiality

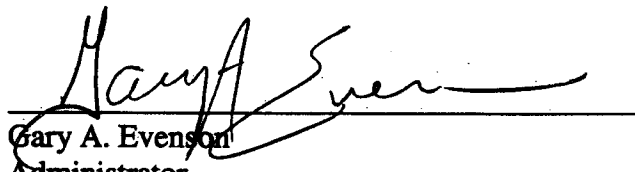
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determination does not prejudice the right of any person to submit a public records request to inspect the contents of the filings subject to this determination.

This order is effective upon mailing.

Dated at Madison, Wisconsin, 11 May 2004

For the Commission:



Gary A. Evenson  
Administrator

Telecommunications Division

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See attached Notice of Appeal Rights

## **2001 RES, ARW, OTH, and CMR Annual Report Confidentiality Determinations**

### **Notice of Appeal Rights**

Notice is hereby given that a person aggrieved by the foregoing decision has the right to file a petition for judicial review as provided in Wis. Stat. § 227.53. The petition must be filed within 30 days after the date of mailing of this decision. That date is shown on the first page. If there is no date on the first page, the date of mailing is shown immediately above the signature line. The Public Service Commission of Wisconsin must be named as respondent in the petition for judicial review.

Notice is further given that, if the foregoing decision is an order following a proceeding which is a contested case as defined in Wis. Stat. § 227.01(3), a person aggrieved by the order has the further right to file one petition for rehearing as provided in Wis. Stat. § 227.49. The petition must be filed within 20 days of the date of mailing of this decision.

If this decision is an order after rehearing, a person aggrieved who wishes to appeal must seek judicial review rather than rehearing. A second petition for rehearing is not an option.

This general notice is for the purpose of ensuring compliance with Wis. Stat. § 227.48(2), and does not constitute a conclusion or admission that any particular party or person is necessarily aggrieved or that any particular decision or order is final or judicially reviewable.

Revised 9/28/98